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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

BALBOA INSURANCE COMPANY,

Plaintiff and Respondent,

v.

ADRIENNE THOMAS,

Defendant and Appellant.

A144443

(San Francisco County  
Super. Ct. No. CPF 14-513800/  
CPF-14-513877)

This is an appeal from two substantively identical judgments following the issuance of an arbitration award in a case arising out of an automobile accident. Plaintiff Balboa Insurance Company initially moved for an order confirming an award in favor of defendant Adrienne Thomas. Defendant asked for and was granted a continuance, but did not file a timely opposition. She did, however, file a motion to vacate the same award. The trial court entered judgment for plaintiff after confirming the arbitration award, and thereafter entered a second judgment following plaintiff's successful demurrer to defendant's motion to vacate. We affirm the judgments.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On April 16, 2012, defendant was involved in a motor vehicle accident on Highway 4 in Contra Costa County, wherein she was rear-ended by an uninsured motorist. She presented an uninsured motorist bodily injury claim to plaintiff pursuant to the terms of her automobile policy. The policy has a \$100,000-per-person limit for bodily injury.

On April 16, 2013, while her uninsured motorist claim was still pending, defendant filed a lawsuit against plaintiff in Contra Costa County Superior Court. This lawsuit, which is reportedly still pending, essentially asserts that plaintiff acted in bad faith when it rejected her demand for payment of the entire \$100,000 policy limit as compensation for her injuries.

On March 4, 2014, defendant submitted a demand for arbitration to the San Francisco office of ADR Services, Inc.<sup>1</sup>

The arbitration hearing was held before Judge Margaret J. Kemp (ret.) on July 22 and 23, 2014, in San Francisco.

On July 27, 2014, Judge Kemp issued a written decision. Judge Kemp concluded that while defendant had sustained an injury to her back as a result of the accident, she had failed to prove the accident was responsible for her other alleged health problems.<sup>2</sup> Defendant was awarded \$12,000 for medical expenses, wage loss, and other damages.

On August 11, 2014, plaintiff filed a petition in the San Francisco Superior Court for an order confirming the arbitration award and for entry of judgment. Defendant was personally served with the petition on September 10, 2014.

On September 22, 2014, defendant filed various opposition papers in response to plaintiff's petition, indicating that she was seeking a continuance and had just filed her own petition seeking to vacate the arbitration award.

On September 29, 2014, plaintiff filed a demurrer to defendant's petition to vacate the arbitration award.

On October 3, 2014, the trial court filed its order continuing the hearing on plaintiff's petition to October 24, 2014. The order states, "Courtesy copies of all papers

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<sup>1</sup> Although defendant dated the demand March 4, 2013, this appears to be a typographical error.

<sup>2</sup> Defendant claimed the accident caused her to suffer a miscarriage about six weeks after the crash, and precipitated a stroke that occurred about six months after the accident.

must be received in Dept. 302 pursuant to Local Rule 2.6B reflecting the new hearing date.”

On October 24, 2014, the trial court filed its order confirming the arbitration award. The order notes: “Defendant was warned that if courtesy copies of the opposition papers were not received in Dept. 302 by October 6, 2014, the motion would be granted.” The order also notes that as of October 23, 2014, no opposition papers had been received.

On November 5, 2014, defendant filed a motion to set aside the order confirming the arbitration award, pursuant to Code of Civil Procedure section 473, subdivision (b).<sup>3</sup> She asserted she did not file her opposition in a timely manner because the court clerk did not advise her the copies were to be provided by October 6, 2014, and instead had told her she was prohibited from filing any additional paperwork prior to the continued court date of October 24, 2014. She also claimed plaintiff’s petition should have been filed in Contra Costa County, while conceding the arbitration was conducted in San Francisco.

On December 16, 2014, the trial court filed its judgment in favor of defendant in accordance with the arbitration award.

On December 24, 2014, the trial court denied defendant’s section 473 motion, observing defendant had been “repeatedly notified that she was required to deliver courtesy copies of her opposition papers, yet still failed to do so prior to the continued hearing date.” The court also concluded she had failed to establish any grounds for setting aside the order confirming the arbitration award.

On January 20, 2015, the trial court sustained plaintiff’s demurrer to defendant’s petition to vacate without leave to amend on the basis that “[t]he arbitration award has been confirmed and judgment entered in favor of the Petitioner.”

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<sup>3</sup> Code of Civil Procedure section 473, subdivision (b) authorizes a court to relieve a party from a “judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” Subsequent unspecified statutory references are to the Code of Civil Procedure.

On February 13, 2015, defendant filed a notice of appeal from the judgment after confirmation of the arbitration award.<sup>4</sup>

On February 19, 2015, the trial court entered a judgment of dismissal as to the petition to vacate. Plaintiff was awarded costs.

## DISCUSSION

### *I. Relevant Law*

Where the parties to a contract agree to waive the right to appeal the decision of an arbitrator, the grounds for judicial review of an arbitration award are extremely limited.<sup>5</sup> (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 26–28 (*Moncharsh*.) An appellate court cannot review the merits of the controversy, the arbitrator’s reasoning, or the sufficiency of the evidence supporting the award. (*Id.* at pp. 11–13.) Even “an error of law apparent on the face of the award that causes substantial injustice does not provide grounds for judicial review.” (*Id.* at p. 33.) A trial court may vacate an arbitration award only as expressly authorized in section 1286.2. (*Ibid.*; *Luster v. Collins* (1993) 15 Cal.App.4th 1338, 1344–1345.)

As relevant here, section 1286.2, subdivision (a) directs a trial court to vacate an arbitration award if it determines: the rights of a party were substantially prejudiced by misconduct of a neutral arbitrator (§ 1286.2, subd. (a)(3)); the arbitrator exceeded his or her powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted (§ 1286.2, subd. (4)); or, the rights of a party were substantially prejudiced by the refusal of the arbitrator to postpone the hearing upon sufficient cause being shown or by the refusal of the arbitrator to hear evidence material to the controversy (§ 1286.2, subd. (a)(5)).

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<sup>4</sup> While it does not appear plaintiff filed a notice of appeal from the February 19, 2015 judgment of dismissal, she does reference that order in her civil case information statement. In the interest of finality, we will construe her appeal as having been taken from both judgments in this matter.

<sup>5</sup> Defendant’s contract with plaintiff provides that disputes must be “settled by arbitration,” and that the arbitrator’s decision “will be binding as to: [¶] . . . [w]hether the Insured is legally entitled to recover damages,” and as to the amount of damages.

“On appeal from an order confirming an arbitration award, we review the trial court’s order (not the arbitration award) under a de novo standard. [Citations.] To the extent that the trial court’s ruling rests upon a determination of disputed factual issues, we apply the substantial evidence test to those issues.” (*Lindenstadt v. Staff Builders, Inc.* (1997) 55 Cal.App.4th 882, 892, fn. 7; *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 23–24.)

## ***II. Defendant’s Arguments***

### ***A. Denial of Defendant’s Request for Independent Medical Review***

Defendant first asserts that it was unfair for plaintiff to have moved forward with arbitration because it never honored her request for an independent medical review. She cites to no authority in support of this argument, and instead proceeds to attack the qualifications of the two expert witnesses who testified for plaintiff at the arbitration hearing. We need not consider this argument.<sup>6</sup>

It is settled that “[c]ourts may not review either the merits of the controversy or the sufficiency of the evidence supporting [an arbitration] award. [Citation.] Furthermore, with limited exceptions, ‘. . . an arbitrator’s decision is not generally reviewable for errors of fact or law, whether or not such error appears on the face of the award and causes substantial injustice to the parties.’ ” (*California Faculty Assn. v. Superior Court* (1998) 63 Cal.App.4th 935, 943–944; accord, *Moncharsh, supra*, 3 Cal.4th at pp. 6, 11–12.)

### ***B. Whether Judge Kemp Considered All the Evidence***

Defendant asserts Judge Kemp did not consider all the evidence during part of the arbitration hearing because she was “ ‘dozing off’ ” during the taped testimony of defendant’s treating cardiologist. She also asserts the arbitration award erroneously states that defendant failed to provide receipts and other documentation of her medical bills.

As noted above, defendant did not file a timely opposition to plaintiff’s motion to confirm the arbitration award. Because there was no opposition, the trial court confirmed

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<sup>6</sup> We note defendant is proceeding in pro. per.

the award without addressing any of the grounds available to a party under section 1286.2 for contesting an arbitration award. Having failed to raise any of these grounds below, she has forfeited the right to raise these contentions on appeal. “ ‘A party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court.’ ” (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 686.)<sup>7</sup>

Regardless, defendant’s contentions lack merit. Section 1286.2 provides a trial court may vacate an arbitration award on five grounds, including that “[t]he rights of the party were substantially prejudiced by . . . the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.” (§ 1286.2, subd. (a)(5).) This provision operates as “a safety valve in private arbitration that permits a court to intercede when an arbitrator has prevented a party from fairly presenting its case.” (*Hall v. Superior Court* (1993) 18 Cal.App.4th 427, 439.)

Our review of the arbitration decision does not suggest that Judge Kemp failed to consider defendant’s cardiologist’s testimony. In particular, Judge Kemp noted the cardiologist had opined that defendant’s stroke was caused by a “blood clot originating probably in a lower extremity which traveled up, passed through her heart and went to the brain where it caused the stroke.” She further noted that one of plaintiff’s expert witnesses had disagreed with defendant’s cardiologist as to the cause of the stroke. In any event, the substance of defendant’s complaint is that the arbitrator’s award was mistaken on the merits. That is, the arbitrator believed plaintiff’s evidence and did not believe her evidence. However, this is precisely the kind of issue which may not be considered on a petition to confirm or vacate an arbitration award.

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<sup>7</sup> While defendant argued in her motion to vacate that Judge Kemp prevented her from presenting material evidence, she cited no facts in support of that argument.

***C. San Francisco Was the Correct Venue***

Defendant asserts defendant filed the petition to confirm the arbitration award in the wrong venue, claiming it should have been filed in Contra Costa County. The contention lacks merit.

Inasmuch as all of the arbitration proceedings occurred in San Francisco, plaintiff filed its petition to confirm the arbitration in San Francisco Superior Court, pursuant to section 1292.2, which provides that “[e]xcept as otherwise provided in this article, any petition made after the commencement or completion of arbitration shall be filed in a court having jurisdiction in the county where the arbitration is being or has been held . . . .” Accordingly, venue was clearly appropriate in San Francisco County.

***D. The Trial Court Properly Exercised Its Discretion in Denying Defendant’s Section 473 Motion***

Defendant claims the trial court erred in failing to grant her section 473 motion following her failure to submit a timely opposition to the petition to confirm the arbitration award.

Under section 473, subdivision (b), a “court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” The party seeking relief “bears the burden of proof in establishing a right to relief.” (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410.) The moving party must show a satisfactory excuse for the mistake. (*Ibid.*) “Neither mistake, inadvertence, or neglect will warrant relief unless upon consideration of all of the evidence it is found to be of the excusable variety.” (*Conway v. Municipal Court* (1980) 107 Cal.App.3d 1009, 1017.) “ ‘A ruling on a motion for discretionary relief under section 473 shall not be disturbed on appeal absent a clear showing of abuse.’ ” (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 257.)

Defendant appears to claim she was confused by the trial court’s October 3, 2014 order granting the continuance. We agree the order is somewhat confusing as it appears to require her to have submitted a courtesy copy of her opposition by October 6, 2014,

whereas the hearing was not scheduled until October 24, 2014. However it is undisputed that she was ordered to comply with local rule 2.6B of the San Francisco Superior Court, as the October 3, 2014 order explicitly states this requirement. The rule (currently numbered as rule 2.7B) provides, in part: “A file-endorsed courtesy copy of any case management statement, response to order to show cause, brief, memorandum, motion or response thereto with supporting papers must be lodged with the clerk of the department . . . to which the matter has been assigned. . . . Failure to lodge courtesy copies of opposition papers *at least three days* before a hearing or as otherwise required by statute, rule or court order may, in the discretion of the judicial officer presiding over the hearing, result in the granting of the motion or continuance of the hearing. . . .” (Italics added.)

To secure relief under section 473, subdivision (b) based on a failure to adequately represent herself, the party seeking relief must show she exercised such reasonable diligence as a person of ordinary prudence usually bestows upon important business. (*Hopkins & Carley v. Gens, supra*, 200 Cal.App.4th at p. 1413.) “The law does not entitle a party to proceed experimentally without counsel and then turn back the clock if the experiment yields an adverse result. One who voluntarily represents himself ‘is not, for that reason, entitled to any more (or less) consideration than a lawyer. Thus, any alleged ignorance of legal matters or failure to properly represent himself can hardly constitute “mistake, inadvertence, surprise or excusable neglect” as those terms are used in section 473.’ [Citation.] Rather, ‘when a litigant accepts the risks of proceeding without counsel, he or she is stuck with the outcome, and has no greater opportunity to cast off an unfavorable judgment than he or she would if represented by counsel.’ ” (*Ibid.*) A party’s mistake in representing herself does not afford a ground for relief from adverse results. (*Id.* at p. 1414.)

While the trial court may have given inconsistent deadlines for defendant to have filed her opposition, she *was* referred to the correct local rule. Had she reviewed the rule in a timely manner, as a reasonably diligent person would have, she would have understood that she needed to file her opposition no later than three days prior to the

continued hearing. Moreover, her opposition would have been timely had she filed it on October 6, 2014.<sup>8</sup> Thus, the court did not mislead her into filing an untimely opposition.<sup>9</sup>

***E. The Trial Court Properly Awarded Costs***

While defendant appears to contest the trial court's order awarding costs to plaintiff after it successfully demurred to her petition to vacate the arbitration award, she cites to no law in support of this contention. The argument has therefore been forfeited. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 [“[w]hen an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived”].)

**DISPOSITION**

The judgments are affirmed.

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<sup>8</sup> We have reviewed the opposition that defendant filed on October 24, 2014, which the trial court refused to consider. Essentially, the opposition is a request for a continuance to allow her additional time to support her claims of error by providing excerpts from recently acquired transcripts of the arbitration hearing. Even if the court had considered her opposition, her moving papers did not provide sufficient grounds such as would have allowed the trial court to vacate the arbitrator's decision.

<sup>9</sup> Defendant claims in her declaration attached to her section 473 motion that the court clerk told her she would not be allowed to file any additional paperwork prior to the October 24, 2014 hearing. However, her declaration indicates that the clerk's statement was made in response to a question posed by plaintiff's counsel, not her.

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DONDERO, J.

We concur:

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HUMES, P. J.

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BANKE, J.